

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In Re:)	Case No. 95-30871
)	Chapter 13
EDWARD GENE HULON JR. and)	
TERESA ANN HULON,)	
)	
Debtors.)	
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ORDER DENYING MOTION TO DISMISS OR CONVERT CASE

This matter came before the undersigned upon the Objection of Trustee to Confirmation of Plan; Motion to Dismiss or Convert Case filed by the Chapter 13 Trustee Warren L. Tadlock. A hearing in the matter was held on August 15, 1995. From that hearing and the Court's records, the following appears:

1. The Debtors filed a case under Chapter 13 on June 13, 1995 ("the current case").
2. In the current case, the Debtors proposed their Chapter 13 plan which calls for a monthly payment of \$380.00, yielding a ten (10%) payout to general unsecured creditors.
3. Prior to filing the current case, the Debtors were previously in a Chapter 13 case which was filed on August 23, 1993 ("the first case"). Due to difficulties in making their plan payments, and at the Debtors' request, the first case was dismissed by this Court on June 15, 1995.
4. The Trustee has filed an objection to confirmation of the Debtors' proposed plan in the current case and a motion to dismiss or convert, alleging a lack of good faith on the part of the Debtors under 11 U.S.C. Section 1325(a)(3). The Trustee's cites as evidence of the Debtors' alleged bad faith the fact that they filed the current case only two (2) days before the Court dismissed the first Chapter 13 case.
5. The filing of consecutive Bankruptcy plans, known as serial filings, is not per se evidence of bad faith on the part of the Debtor. Absent any additional aggravating factors, such as a great number of plans filed over a short period of time or fraud on the part of the Debtors, a Chapter 13 plan should not be rejected simply because it is filed shortly after a prior petition (assuming S. 109(g) is not applicable). Support for this position is found in the Supreme Court's decision of, Johnson v. Home State Bank, 111 S.Ct. 2150 (1991).

6. In the current case, the record reflects no additional aggravating factors which would be indicative of bad faith. Rather, the record reflects that this refiling was sought by the Debtors to enable them to lower their plan payment amount so that they would be able to make the payments to their creditors, not the reverse. While the effect of this refiling may be that the Debtors remain in Chapter 13 via two cases longer than S. 1322 contemplates for a single case, this in of itself is not indicative of bad faith.

Therefore, the Trustee's Objection is **OVERRULED** and the Motion to Dismiss or Convert case is **DENIED**. The Trustee will tender the Court an Order Confirming the Plan.

IT IS SO ORDERED.

This is the _____ day of _____, 1995.

United States Bankruptcy Judge